

1.IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: WILLIAMSBURG RURAL FIRE DEPARTMENT

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**WILLIAMSBURG RURAL FIRE
DEPARTMENT**

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 39

TO: Mark Hulsberg, Fire Chief
Williamsburg Rural Fire Department
303 West Welsh Street
Williamsburg, Iowa 52361

I.SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Williamsburg Rural Fire Department for the purpose of resolving the air quality violations which occurred during the burning of a demolished church in Parnell, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Brian Lee, Field Office 6
Iowa Department of Natural
Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural
Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural
Resources
Henry A. Wallace Building
502 East Ninth Street

II. JURISDICTION

Pursuant to the provisions of Iowa Code section 455B.134(9) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. The Williamsburg Rural Fire Department is a volunteer fire department that serves the City of Williamsburg and the surrounding areas. On January 6, 2010, DNR Field Office 6 sent out letters to all the fire departments in its region, including the Williamsburg Rural Fire Department. The letter outlined the open burning regulations, as well as the requirements for training fires and controlled burns.

2. On June 11, 2010, Marion Burnside, DNR asbestos coordinator, conducted an inspection at Saint Joseph's Catholic Church located at 836 F52 Trail, Parnell, Iowa. Mr. Burnside noted that the church had been demolished and pushed into a pile. Mr. Burnside spoke to Bill Zimmerman, a member of the Church's demolition committee. Mr. Zimmerman stated a local contractor had demolished the church because it was no longer being used. Mr. Zimmerman stated no asbestos samples had been collected prior to the demolition and there had been no demolition notification submitted. Mr. Burnside collected samples of suspect material from the demolition debris.

3. On June 16, 2010, Mr. Burnside telephoned Mr. Zimmerman and informed him of the laboratory results. Mr. Burnside instructed Mr. Zimmerman that an asbestos inspection of the remaining debris pile must be conducted and if the pile contained asbestos the entire pile would have to be taken to the landfill as asbestos containing material.

4. On June 17, 2010, Mr. Zimmerman telephoned Mr. Burnside and informed him that on the evening of June 16, 2010, the Williamsburg Rural Fire Department burned the demolition debris pile. Mr. Zimmerman also contacted DNR Field Office 6 to determine what could be done with the remaining debris pile. The field office personnel informed Mr. Zimmerman that the DNR would discuss the options and until a decision was made the debris should remain wet and the field office personnel also suggested the area be fenced or taped off.

5. On June 18, 2010, Kurt Levetzow and Brian Lee, DNR Field Office 6 personnel, visited the Church location. The site was fenced off with a portion of the church debris still smoldering. The field office personnel spoke to Mr. Zimmerman on the telephone during the investigation. Mr. Zimmerman stated that prior to the fire he had scheduled asbestos contractors to assess the building on June 17, 2010, but that it was burned prior to assessment. Mr. Zimmerman stated that another Church board member had previously spoken to the Williamsburg Rural Fire Department about conducting a training fire or a controlled burn. Mr. Zimmerman again asked if the debris could be buried on site. The field office personnel stated that information was still being gathered and the field office personnel would inform him and the Church board what would need to be done to clean up the site.

6. On June 22, 2010, DNR issued a Notice of Violation letter to the Williamsburg Rural Fire Department for the open burning of the old church. The letter included asbestos violations and open burning violations. A Notice of Violation letter was also issued to Saint Joseph's Catholic Church.

7. Following the fire, the results of the laboratory samples that Mr. Burnside had collected were received. The analytical results indicated that the sample of the green shingles contained 2% Chrysotile asbestos. Saint Joseph's Catholic Church was required to treat the remaining demolition debris and fire debris as asbestos containing material and the debris was required to be disposed of as asbestos containing material. On August 26, 2010, the debris was removed and taken to the Iowa County Landfill as asbestos containing material. The landfill receipts were submitted to DNR Field Office 6 on August 31, 2010.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The Williamsburg Rural Fire Department burned a debris pile at the Saint Joseph's Catholic Church property. The above facts demonstrate noncompliance with this provision.

3. 567 IAC 23.2(3)"g" provides an exemption to the open burning regulations and allows bona fide training fires conducted for training of public or industrial employees in firefighting methods. A training fire must be conducted on a building that is structurally intact and does not include

the controlled burn of a demolished building. A notification to the DNR is required to conduct a training fire and all asbestos containing material must be removed from the structure prior to the training fire. Additionally, asphalt roofing may only be left on a structure if it does not contain asbestos. On July 16, 2010, the Williamsburg Rural Fire Department burned a debris pile. This was not a building that was structurally intact. Additionally, the fire department failed to notify the DNR of the training fire and failed to remove all asbestos containing material prior to burning the building. Therefore, the burning of the debris pile by the Williamsburg Rural Fire Department was not exempt under the training fire exemption.

4. 567 IAC 23.2(3)"j" provides an exemption to the open burning regulations and allows for the controlled burn of a demolished building. The exemption allows a city with the approval of its council to conduct a controlled burn on a demolished building. A city is the only party that may conduct such burn and is responsible for ensuring all the requirements are met. The city or fire department is required to submit a notification at least 10 days prior to the demolition and at least 30 days prior to the controlled burn. Additionally the building must be inspected for asbestos and if asbestos is found it must be removed prior to the demolition and burn. Parnell does not qualify as a city by the definition of city as defined by the Iowa Code. Additionally, the fire department failed to submit notification prior to the demolition and the burn. The asbestos containing material was not removed prior to the demolition or the burn. Therefore, the burning of the demolition debris by the Williamsburg Rural Fire Department was not exempt under the controlled burn exemption.

5. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

6. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the building was placed in a hole and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V.ORDER

THEREFORE, it is hereby ordered and the Williamsburg Rural Fire Department agrees to do the following:

- 1.The Williamsburg Rural Fire Department is to pay a penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.**

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It does not appear the Williamsburg Rural Fire Department gained an economic benefit from the burning of the church debris since the building was owned by Saint Joseph's Catholic Church. Any economic benefit would have been recognized by Saint Joseph's Catholic Church. Therefore, no economic benefit is being assessed.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structure. The shingles in the demolition debris contained regulated amounts of asbestos and the burning of the debris likely exposed members of the fire department and any other bystanders to the asbestos fibers. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid

waste regulations is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor.

Culpability – The Williamsburg Rural Fire Department has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Additionally, the fire department was sent a letter in January 2010 detailing the requirements for controlled burns and training fires. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the Williamsburg Rural Fire Department. For that reason, the Williamsburg Rural Fire Department waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
Sept, 2010.

 Fire Chief

Williamsburg Rural Fire Department

Dated this 28 day of
Sept., 2010.

Barb Stock (Con 10-6 Iowa County); Kelli Book; Brian Lee, DNR Field Office 6; VI.C and VII.C.1